

**Cal/EPA Tribal Policy Stakeholder Meeting
Minutes
January 9, 2006**

Attendees: Lenore Volturmo – Pala Band of Mission Indians
Joseph Myers - National Indian Justice Center
Ron Reed - Karuk Tribe of California
Greg Nesty – Trinidad Rancheria
Arlene Ward – Mechoopda Indian Tribe of the Chico Rancheria
Michael DeSpain – Greenville Rancheria
Irenia Quitiquit – Robinson Rancheria of Pomo Indians
Mike Connolly – Campo Band of Kumeyaay Indians
Melody Sees – Los Coyotes Band of Cahuilla Indians
Mark Franco – Winnemem Wintu Tribe
Linda Blue – Wilton Rancheria
Carmen Mojado – San Luis Rey Band of Mission Indians
Cynthia Gomez, California Department of Transportation
Jila Priebe, California Department of Transportation
Gabriel Pasqua, U.S. Environmental Protection Agency
Shankar Prasad – Cal/EPA Office of the Secretary
Diane Trujillo – Cal/EPA Office of the Secretary
Gabriel Ruiz – Air Resources Board
Mary Farr – California Integrated Waste Management Board
Amy Dunn – Office of Environmental Health Hazard Assessment
Adrian Perez – State Water Resources Control Board
Mona Arteaga– Department of Toxic Substances Control
Pam Wofford – Department of Pesticide Regulation

Meeting Host:

The Pala Band of Mission Indians provided the meeting facilities and hosted dinner and lunches for meeting participants.

Opening Prayer: Melody Sees (Los Coyotes Band of Cahuilla Indians)

Opening Remarks:

Lenore Volturmo welcomed participants and informed the group that she was a member the Cal/EPA Environmental Justice Advisory Committee as the Tribal government representative. As such, she supported the recommendation that a separate tribal group should be formed to advise Cal/EPA on development of a tribal policy. She informed the group that she was asked by Mr. Jim Branham, former Undersecretary of the Cal/EPA, to assist with this effort. Ms. Volturmo sees this tribal stakeholder group as not only developing tribal policy contents, but would like to get a working document that could work with all environmental issues for all tribes statewide.

Dr. Shankar Prasad, Cal/EPA's Deputy Secretary for Science and Environmental Justice, welcomed the participants and provided background information about the formation of the stakeholder group and the purpose of the Cal/EPA Policy for Working with Tribal Governments and Secretary Alan Lloyd's commitment to develop the policy.

Round Table Introductions:

Each of the participants had varied environmental issues and concerns affecting their tribes and information to share with others. These included:

- Saving sacred sites
- Water issues - destruction of a waterfall
- Recognition of ancestral territories and historic traditional tribes who are not recognized by the Bureau of Indian Affairs.
- FERC re-licensing along the Klamath River
- Environmental reports prepared for the Karuk Tribe
- Protection of aboriginal water rights
- Immediate reporting to a tribal authority when environmental problem is perceived on tribal land by non-tribal member
- Include CalFed's efforts working with tribes into the Cal/EPA Tribal Policy. Cal/EPA is among the 23 state and federal agencies to improve water supplies in California and the health of the Delta ecosystem.
- 135 acre land development that requires an increase in the number of wells and its impacts on the Los Coyotes Band of Cahuilla Indians
- US EPA's Consultation Approach should include the need for more time. It could take up to one year to complete this tribal policy. Each tribe will need to be consulted and allow for comments to be submitted. Show respect for sovereignty in all arenas.
- To bring the un-recognized tribal voice to state government
- Address small tribal land base issues
- Protection of burial sites
- Protection of cultural resource sites
- Having safe drinking water
- Loss of agricultural lands
- Development of a "consultation process"
- Pesticide use and its impacts on tribes
- Developing MOU's with State agencies
- Protection of fishery and tribal village sites
- Mining and its impacts on water
- Fire suppression
- Endangered species act and its impacts on tribal economy

Presentations were given by: *Diane Trujillo, Cynthia Gomez, Joseph Myers and Mike Connolly:*

Diane Trujillo from the California Environmental Protection Agency, Office of the Secretary, made a presentation on the roles and responsibilities of the Cal/EPA Office of the Secretary and its boards, department and office.

Cynthia Gomez, Branch Chief for the Native American Liaison Branch in the California Department of Transportation (CalTrans) presented the background and challenges in CalTrans' efforts to establish and implement a policy to work with Native Americans, and more specifically California Indian Tribal Governments.

- CalTrans developed the first State Tribal Policy. CalTrans Tribal policy was developed to not only include federally and non-federally recognized Tribes but also urban Indians.
- Pointed out that a policy is important to provide a foundation for future working relationships with Tribes and establishes a clear statement of that relationship for both the Tribes and CalTrans.
- Challenges are inherent by the sheer size of the parties involved; in California there are 108 federally recognized tribes, approximately 50 non-federally recognized tribes, 44 regional transportation agencies and 12 CalTrans district offices.
- CalTrans being one of the largest Departments in the State, with approximately 20,000 employees, in itself presents a challenge to train and inform its own employees. In addition to the limited resources, rapid growth patterns in California, land use decisions by the various governing bodies, environmental and other issues.
- A policy, setting the tone for good relationships among the parties, is essential to deliver a safe, efficient intermodal transportation system.
- Suggested using several approaches. That a policy is a good place to start, however, a policy does not mean anything unless you implement it. That a strategy to do this for CalTrans has included an Advisory Committee, a website for access to information, training for employees as well as tribal leaders.
- Cited recent problem when a TERO (Tribal Employment Rights Ordinance) policy was taken off the website without consultation with the tribes; this action was contrary to CalTrans Tribal policy.
- Ms. Gomez further commended Cal/EPA staff for their strategic plan to consult with Tribes in the development and implementation of the policy.
- Once the foundation (i.e., mission, goals, and functions) is outlined in the tribal policy, revisions and amendments can be made at a later time that address future issues brought forward.
- Ms. Gomez introduced several present and former members of the CalTrans Native American Advisory Committee (NAAC) who were present including Mr. Joseph Myers, co-panelist. The NAAC created the CalTrans

Native American Advisory Board. This Board has 18 California Tribal representatives from tribal organizations, and non-federal and federally recognized tribes that discuss and provide recommendations on tribal issues.

- **Joseph Myers** is the Chairman of the CalTrans Native American Advisory Committee (NAAC). Mr. Myers is also the founder and Executive Director for the National Indian Justice Center and the California Indian Museum and Cultural Center. As an attorney, a judge, and a professor at UC Berkeley specializing in Indian law, Mr. Myers has been a valuable advisor to CalTrans. Mr. Myers presented the following:
 - The tribal policy has to include a distinction between “consultation” and a “working relationship or recognition of sovereignty of Indian Tribes.”
 - Explained that a "government to government" relationship with Tribes was very important to enable State agencies to properly exercise consultation practices to improve the communication and ultimately the delivery of services to Indian communities.
 - Defined sovereignty as an inherent right for Tribes to make their own laws and to be governed by those laws.
 - On the subject of environmental justice, what EJ means to Indians is to get a seat at the table with other decision-makers; If change is to occur, Tribes don't need permission, they possess it because of their government-to-government relationship.
 - Mr. Myers is the son of Mrs. Tillie Hardwick, a plaintiff in the Tillie Hardwick class action suit that resulted in un-terminating 17 California Tribes.

Mike Connolly is a Councilman of the Campo Band of Kumeyaay Indians. Mr. Connolly made a presentation on Inter-Governmental Cooperation with focus on the Campo Creek Source Basin. He discussed the cooperative agreements that the Campo Band has with local Fire Department, Hazard Materials Team (HazMat), and the San Diego Environmental Health Department.

Main issues covered in his presentation included:

- Leaking Underground Storage Tanks
- State system to review Septics to determine whether they're leaking contaminants into the aquifer
- Truck stops
- Transportation and Terrorism
- Intentional acts committed by non-tribal members
- Off Reservation Growth
- Ponds – evaporation aquifer quantification and land use planning
- Solid Waste Management and Enforcement::
 1. Littering -non-members are the biggest problems

2. In 1994 there were no open dumps and now four or five are scheduled for cleanup
 3. Freeway spills: DTSC goes after the party
 4. EPA statutes – trespassing is the charge received for violation of the solid waste ordinance
- “Environmental Economics”
 - Taxation and Equity

Mr. Connolly believes, as development continues, tribal land will be the last “open space” to deal with natural resources. He is concerned that tribes have been left out in the beginning phases of development, are the last ones to be consulted and that it is usually after a project has already been designed and approved. He stated there is a tribal need to be involved and be a participant in the beginning of projects impacting tribal lands.

First day of meeting concluded at 5:00 p.m.

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Stakeholder Group Expectations

During the morning session, meeting participants were asked to provide the reasons for their participation and their expectations of Cal/EPA’s Tribal Policy. The following points and questions were brought forward and discussed in the morning session:

- 1) Develop a policy to help CalFed in their daily work as an implementing agency.
- 2) Ability to have tribal participation at various BDO levels in the decision making process.
- 3) Look at all historic California Indian tribes (Federally and non-Federally recognized) as equal partners in the process.
- 4) Tribal participants requested to meet privately with one another in order to discuss their concerns. All participants agreed to the request and BDO participants temporarily moved to another room. The following was discussed when the group reconvened:
 - a) Pre-consultation procedures, note-taking, distribution, timelines, location of meetings, meeting frequencies were discussed.
 - b) A need for a mediator/facilitator at the meetings was requested.

- c) Timelines for this policy are too short. To receive input from all 107 tribes will take a long time. Need direct confirmation from tribes (decision bodies). Dr. Prasad indicated it was possible to extend the timeline for developing the policy as a result of the concerns.
- d) Use CalTrans policy as a starting point for Cal/EPA draft policy:
 - Title: Interacting with Native American Communities
 - Policy
 - Intended Results
 - Responsibilities
 - Applicability

Tribal Policies Breakout Session

The breakout session consisted of the brief review of a packet of materials containing various policies and memoranda from California and other state government departments and the federal government previously mailed to tribal stakeholders for review. Mona Arteaga provided facilitation and broke out participants into groups to analyze seven of these policies and memoranda from The White House; U.S. EPA; Washington State; Nebraska; Arizona; U.S. Department of Commerce; New Mexico. The goal was to analyze and identify potential parts of those policies that could be incorporated into Cal/EPA's tribal policy and to provide comments and examples to the group.

Findings of Breakout Session:

1. **The White House:** *Memorandum for the Heads of Executive Department and Agencies: Government to Government Relations with Native American Communities*
 - In order to ensure the rights of tribal sovereign government (federally and non-federally recognized) are fully respected, the BDOs shall be guided by the following:
 - a) *Add non-federally recognized to:* "The head of each executive department and agency shall be responsible for ensuring that the department or agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments."
 - b) *Add non-federally recognized to:* "Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may

evaluate for themselves the potential impact of relevant proposals.”

- c) *Change Federal to State*: “Each executive department and agency shall assess the impact of Federal Government plans, projects, programs and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.
- d) *No change*: “Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.
- e) *Change to Federal “and State:”* “Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.”

2. **US EPA Federal Register:** *Executive Order 13175 – Consultation and Coordination with Indian American Tribal Governments*

Approach for Consultation with Tribes:

- Describe or establish the agencies approach to coordinate with tribes concerning enforcement actions/activities.
- Consult and coordinate with tribes on enforcement actions on non-tribal entities.

3. **Washington State Department of Ecology:** *Centennial Accord Implementation Plan*

Format:

- Introduction - Giving basis for relationship between tribes and Agency
- Definitions
- Establish time frame for consultation - independent of
- Implementation guidelines
- Permit assistance handbook – recognizes the unique jurisdiction status of Indian reservations / tradition/ territories

Policy:

- Acknowledge established basis of inherent sovereignty
 - Unique Status
 - Predate formation of U.S.
- Outside reservation affect on tribes

- Commitment to government-to-government consultation
- Consultation independent of public participation process
- Dispute resolution process (negotiate with tribes how to manage disputes)
- Funding distribution
 - grants,
 - budget allocation
- Additional information for tribes – access to detailed, up-to-date information about Agency and BDOs. (Reference to website and resources)

Intended Results:

- Better understanding of rights and interests of tribal governments
- Create durable intergovernmental relationships to promote coordinated environmental approaches/partnerships
- Early notification
- Open invitation for consultation
- Receptive to all requests from tribes
- Standing open door policy
- Interacting through official of appropriate stature/authority
- Go beyond issue-specific consultation
- Communicate, collaborate, and coordinate mutual priorities and programs

4. Nebraska Office of the Governor: *Government-to-government Relations with Native American Tribal Governments*

(Text from Nebraska policy was revised to apply to California)

- Recognizes that federal and non-federally recognized tribes have a unique status that sets them apart from other groups and interests in the State of California. This status adds the significant dimensions of government to government relationships to the manner and quality of state agencies, officer and staff interaction with tribes and their components.
- Each agency shall consult at the beginning of the planning process, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect California tribal governments. All such consultations shall be conducted so as to facilitate the evaluation of the potential impact of relevant proposals on the tribes.

5. Arizona Department of Environmental Quality: *Tribal Government Policy; Tribal Liaison Fact Sheet; Tribes of Arizona Fact Sheet*

Negative point:

- No acknowledgement of non-recognized tribes

Positive points:

- Needs tribal consent to conduct any activities on tribal lands
- It officially recognizes sovereignty
- Creates office of tribal liaison
- Each tribe assumes full responsibility for federal environmental programs
- Will not impose state taxes and fees on sovereign tribal land

6. US Department of Commerce: *American Indian and Alaska Native Policy*

Positive points:

- Defines government-to-government relationship and consultation
- Acknowledges trust relationship
- Seeks tribal input on policies and programs that affect them
- Remove any legal and procedural impediments for communications
- Interagency cooperation
- Helps tribes meet economic goals
- Ensures this policy implemented in day-to-day operations.
Reviewers of this policy felt strongly that this point was the key to an effective consultation policy. To avoid misunderstandings arising from staff being inadequately informed about consultation, the reviewers felt that ongoing staff education should be a part of consultation. Others in the group thought that this was implementation, not policy. Reviewers felt that the impetus for the implementation should be in the consultation policy, and suggested wording as follows:

“Cal/EPA shall initiate and coordinate programs to encourage communication between Cal/EPA BDOs and tribes. The purpose of this outreach is to inform agency staff about how day to day operations affect tribal interests so staff will better understand when and why consultation is needed.”

7. New Mexico Indian Affairs Department: *Mission Statement*

Positive points:

- Clear goals
- Recognizes tribal governments as primary – priority
- Empowers tribes
- Initiates partnerships between state governmental entities and tribes

Expectations

At the conclusion of the meeting, the group collectively prepared the following list of expectations as it pertains to the development of this policy:

1. Ensure Environmental Justice issues are being dealt with as they pertain to all state departments
2. Coordinate federal and state EJ programs to include tribes
3. What is the Cal/EPA role with counties and cities working with tribes?
4. Health issues
5. Understanding each BDO infrastructure – provide role and responsibility organizational chart
6. Cal/EPA to provide definition of government -to-government; consultation; sovereignty; environmental justice and what they mean for Cal/EPA
7. Educate BDOs on tribal governments
8. Dissemination of information to all California tribes (mail, e-mail, Cal/EPA website, faxes)
9. Dissemination of information from tribal stakeholders to tribal governments:
 - NAEPC – Native American Environmental Protection Coalition
 - CalFed Bay Delta Authority
 - RTOC – Regional Tribal Operations Committee (USEPA)
10. Dissemination of information to tribes (mail, e-mail, Cal/EPA website, faxes)
11. Use established regional tribal representatives to disseminate information after the policy is in place.
12. Cal/EPA to prepare letter to all tribes to introduce the stakeholder group and the purpose of developing a Cal/EPA Tribal policy. Ask tribes who future communications should be addressed to.
13. Can we invite agencies under Cal/EPA's umbrella to be present?
14. Provide contact list of all the stakeholders.
15. Who will take the lead at Cal/EPA in writing the policy?
16. Use CalTrans format as a template/boilerplate to write the Cal/EPA policy.
17. Identify the elements of the Cal/EPA policy.
18. Set a timeframe and meeting locations, date and time for the tribal stakeholder group.

19. Need to document who is responsible for enforcement and compliance.
20. When making decisions, how is this going to impact the tribes? Will it impact tribal employment for instance; impact of multiple species conservation plans? This affects the long term ability of tribes to acquire land and bringing it in. Habitat destroyed in urban development affects tribes.
21. Three components of the policy should include:
 - a) Policy
 - b) Implementation plan - (Who is responsible at Cal/EPA?)
 - c) Working units within Cal/EPA, (i.e. staff and advisory council)

Next Steps/Action Items:

- 1) Cal/EPA will prepare a letter to all tribes (chair and EPA staff) to introduce the stakeholder group and the purpose of developing a Cal/EPA tribal policy. Ask tribes who future communications should be addressed to.
- 2) Cal/EPA will transcribe the meeting notes and distribute to the group by January 21, 2006.
- 3) Stakeholder group reviews notes and to respond with comments to Cal/EPA (Diane Trujillo) by February 1, 2006.
- 4) Send a confirmation e-mail of approved meeting notes to tribes.
- 5) Diane will have approved meeting notes posted on Cal/EPA website.
- 6) Lenore, Michael, Joe, and Irenia will review tribal expectations and incorporate policy elements into draft policy by February 1, 2006 and disseminate to Tribal Stakeholder group and Cal/EPA Tribal Policy Committee. (Diane Trujillo to attend.)
- 7) Comments on the draft policy due by 3/1/06 to Diane Trujillo. Comments will be presented at the March meeting for discussion.
- 8) Next meeting date is set tentatively for March 8-9, 2006. Potential meeting location is Robinson Rancheria. (Meeting date has been confirmed.)
- 9) Diane will e-mail contact information to the group.

Roundtable feedback was given at the conclusion of the meeting. Participants provided positive comments and thanks. Meeting concluded.